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FILED

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SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CV

17 80 070 MISC
 Miscellaneous Action No. _____

IN RE APPLICATION OF ANZ
 COMMODITY TRADING PTY LTD. FOR
 AN ORDER PURSUANT TO 28 U.S.C.
 § 1782 TO CONDUCT DISCOVERY FOR
 USE IN FOREIGN PROCEEDINGS,

Petitioner.

**EX PARTE APPLICATION OF ANZ
 COMMODITY TRADING PTY LTD. FOR
 AN ORDER PURSUANT TO 28 U.S.C.
 § 1782 TO CONDUCT DISCOVERY FOR
 USE IN FOREIGN PROCEEDINGS**

ANZ Commodity Trading Pty Ltd. ("ANZCT" or "**Petitioner**"), on the basis of the
 concurrently filed Memorandum of Points and Authorities, and Declarations of Henry S.
 Weisburg and Guy Hardaker, dated June 5, 2017 and May 26, 2017, respectively (and the
 exhibits thereto¹), and pursuant to 28 U.S.C. § 1782 and Federal Rules of Civil Procedure 26, 30,
 and 45, respectfully asks this court to grant the Proposed Order authorizing Petitioner to serve
 the subpoenas attached as Exhibits 1-7 to the accompanying Declaration of Henry S. Weisburg
 upon the following individuals and entities: (1) Mr. Steven Kao; (2) Genesis Resources, Inc.; (3)
 Ms. Melinda Kao; (4) Genesis KingHwa LLC; and (5) East West Bank (the "**Witnesses**").

The requested relief is for the purpose of obtaining discovery for use in a contemplated
 civil proceeding before a foreign tribunal. The discovery is necessary to understand the business

¹ Pursuant to Fed. R. Civ. Pro. 5.2(a)(4), Exhibits 5, 6, and 7 to the Declaration of Guy Hardaker have been redacted
 in part to protect financial account information.

1 relationships among the Witnesses and information they have regarding remittances on which
2 they were named the beneficiary or the beneficiary bank or have a close relationship thereto.
3 These remittances were obtained in discovery from proceedings in Hong Kong concerning
4 Petitioner's very substantial losses arising from a series of fraudulent nickel trades. The
5 Witnesses are not parties to those proceedings, nor does Petitioner currently intend to make the
6 Witnesses party to its contemplated foreign civil proceedings.

7 This application ("**Application**") meets all of the statutory requirements for issuance of
8 an order for the requested discovery under 28 U.S.C. § 1782. *First*, the Witnesses all reside or
9 can be found in this district. *Second*, the subpoenas direct each of the Witnesses to produce
10 relevant documents, and, in the case of Mr. Kao and Ms. Kao, to provide testimony, for use in a
11 contemplated civil proceeding outside the United States. *Third*, Petitioner is an "interested
12 person" within the statute as it seeks information to seek redress for the substantial injuries it has
13 suffered as a result of a sophisticated fraud. *Finally*, all of the discretionary factors the courts are
14 required to consider weigh in favor of granting discovery: the Witnesses are not anticipated to
15 be parties to the foreign proceeding, there is every reason to believe the foreign court will be
16 receptive to information ordered disclosed by a U.S. court, and the discovery is being sought in
17 good faith, is highly relevant to the contemplated foreign proceeding, and is neither unduly
18 burdensome nor intrusive. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 262-
19 65 (2004).

20 Petitioner seeks the requested relief *ex parte*, which is permissible in the Ninth Circuit.
21 *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976); *In*
22 *re Application of Vickers Holding & Fin. Inc.*, No. 17-mc-80028-LB, slip op. at 3 (N.D. Cal.
23 Mar. 14, 2017).

24 WHEREFORE, Petitioner respectfully requests that this Court:

25 (1) Grant Petitioner's Application pursuant to 28 U.S.C. § 1782;

26 (2) Authorize Petitioner, through undersigned counsel or its agent, to issue, sign, and
27 serve subpoenas upon the Witnesses in substantially the same form as attached to the Declaration
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1 of Henry S. Weisburg as Exhibits 1-7 to take discovery relating to the issues identified in this
2 Application;

3 (3) Direct the Witnesses Mr. Steven Kao, Genesis Resources, Inc., Ms. Melinda Kao,
4 Genesis KingHwa LLC, and East West Bank to comply with such subpoenas in accordance with
5 the Federal Rules of Civil Procedure and the Rules of this Court.

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8 Dated: June 5, 2017

SHEARMAN & STERLING LLP

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10 By: 

John F. Cove, Jr.

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